

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



JOSE PEREZ,

Charging Party,

v.

FULLERTON ELEMENTARY SCHOOL

DISTRICT July 28,

Respondent.

Case No. LA-CE-4377-E

Administrative Appeal

PERB Order No. Ad-339

2004

Appearances: M. Candice Bryner, Attorney, for Jose Perez; Law Offices of Margaret A. Chidester & Associates by Sharon J. Ormond, Attorney, for Fullerton Elementary School District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on a motion for acceptance of late filing of Fullerton Elementary School District's (District) response to Jose Perez's (Perez) statement of exceptions to the administrative law judge's (ALJ) proposed decision.

The Board finds good cause exists to allow the late filing of the District's response to Perez's exceptions, based on the discussion below.

DISCUSSION

Perez filed a statement of exceptions to the ALJ's proposed decision and served it on May 10, 2004. The District's response was due on June 4, 2004. On June 4, 2004, the District mailed its response by certified mail to Perez and PERB. Had the response been sent by

facsimile to PERB it would have been timely filed.¹ It was received in the PERB office on Monday, June 7, 2004, the next business day.

The Board has found good cause existed where the reason for the delay was "reasonable and credible" (Barstow Unified School District (1996) PERB Order No. Ad-277) and "when the party made a conscientious effort to timely file and the delay caused no prejudice to any party in the case" (United Teachers of Los Angeles (Kestin) (2003) PERB Order No. Ad-325).

In Coachella Valley Unified School District (1998) PERB Order No. Ad-292, the Board determined there was not good cause when based on an "unspecified reference to a postal or clerical delay."

Here, the delay was caused by a specific incident, immediately recognized and corrected. Under the new PERB Regulation 32135² it is no longer sufficient to mail a response by certified mail postmarked on the last day for filing. Now, a copy must be received in the Appeals Office on the due date. It may be filed by facsimile transmittal. If, as is the office policy of the attorney for the District, the secretary had faxed the document, the issue would not have arisen. The affidavit of the secretary indicates it was an honest clerical error. We believe it is significant that there was no prejudice to the other party. The Board does not condone late filing and will only consider a request to accept a late filing in circumstances consistent with the case law indicating an honest error, coupled with an expedient and thorough explanation.

¹PERB Regulation 32135. (PERB regs. are codified at California Code of Regs., tit. 8, sec. 31001, et seq.)

Effective December 13, 2003.

ORDER

The Fullerton Elementary School District's request that the Board accept its late filed response to exceptions in Case No. LA-CE-4377-E is hereby GRANTED.

Members Whitehead and Neima joined in this Decision.